

1 JAMES E. LYONS (STATE BAR NO. 112582)
2 THOMAS V. CHRISTOPHER (STATE BAR NO. 185928)
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Four Embarcadero Center, Suite 3800
3 San Francisco, California 94111
Telephone: (415) 984-6400
4 Facsimile: (415) 984-2698

5 GARRETT J. WALTZER (STATE BAR NO. 130764)
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
6 525 University Avenue, Suite 1100
Palo Alto, California 94301
7 Telephone: (650) 470-4500
Facsimile: (650) 470-4570

8 Attorneys for Defendant
9 YAHOO! INC.

E-FILED - 4/30/09

10

11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 CONGREGATION BETH AARON,) CASE NO.: 5:08-CV-05438-RMW
Derivatively on behalf of YAHOO! INC.,)
15 Plaintiff,) STIPULATION AND []
16 v.) ORDER SETTING BRIEFING
JERRY YANG, RON BURKLE, ROBERT) SCHEDULE AND HEARING ON
KOTICK, GARY WILSON, MAGGIE) YAHOO! INC.'S MOTION TO DISMISS
WILDEROTTER, ROY BOSTOCK, ERIC) CONGREGATION BETH AARON'S
HIPPEAU, ARTHUR KERN, EDWARD) AMENDED VERIFIED
KOZEL, and VYOMESH JOSHI,) SHAREHOLDER DERIVATIVE
Defendants,) COMPLAINT
And YAHOO! INC.,)
Nominal Defendant.)

24

25

26

27

28

1 WHEREAS, on December 3, 2008, plaintiff Congregation Beth Aaron filed a Verified
 2 Shareholder Derivative Complaint against defendants Jerry Yang, Ron Burkle, Robert Kotick,
 3 Gary Wilson, Maggie Wilderotter, Roy Bostock, Eric Hippeau, Arthur Kern, Edward Kozel,
 4 Vyomesh Joshi (the “Individual Defendants”), and nominal defendant Yahoo! Inc. (“Yahoo!”)
 5 (collectively, the “Defendants”), in the San Jose Division of the United States District Court for the
 6 Northern District of California (the “Complaint”);

7 WHEREAS, on December 19, 2008, the parties submitted a written stipulation to the Court
 8 extending Defendants’ time to answer, move or otherwise respond to the Complaint until
 9 February 3, 2009;

10 WHEREAS, on January 29, 2009, the parties submitted a written stipulation to the Court
 11 extending Defendants’ time to answer, move or otherwise respond to the Complaint until March 23,
 12 2009;

13 WHEREAS, on February 20, 2009, Congregation Beth Aaron filed an Amended Verified
 14 Shareholder Derivative Complaint against the Individual Defendants and nominal defendant Yahoo!
 15 (the “Amended Complaint”);

16 WHEREAS, there has been pending in the Delaware Court of Chancery since February
 17 2008 five shareholder actions against Yahoo! and certain current and former officers and directors
 18 of Yahoo!, including the Individual Defendants, that were consolidated under the caption In re
 19 Yahoo! Shareholder Litigation, Cons. C.A. No. 3561-CC (the “Delaware Action”) and which
 20 contain both class and derivative claims;

21 WHEREAS, on December 10, 2009, Yahoo!, the individual defendants in the Delaware
 22 Action and plaintiffs in that action executed a Stipulation And Agreement Of Settlement (the
 23 “Settlement Agreement”) that releases, subject to approval of the Court of Chancery, all claims
 24 asserted by plaintiffs in the Delaware Action or “that could have been asserted in any forum by
 25 Plaintiffs or any Class Member, on behalf of themselves, the Class or Yahoo!, against [Yahoo! or
 26 the individual defendants in the Delaware Action] which arise out of, relate to, or are based upon
 27 alleged breaches of fiduciary duty to Yahoo! and its shareholders or other alleged violations of law,
 28

1 including the federal securities laws or other federal, state or local law, arising from or in
2 connection with Defendants' responses to Microsoft's proposal to acquire the Company, [an
3 agreement between Yahoo! and Google Inc., the terms of which were disclosed on June 13, 2008],
4 or the proxy contest with Carl Icahn, prior to the last day of the Class Period, including without
5 limitation the matters alleged" in complaints submitted by plaintiff in the Delaware Action to the
6 Court of Chancery;

7 WHEREAS, on March 9, 2009, the Court of Chancery issued an order (the "Chancery
8 Court Order") certifying the Delaware Action as a class action and approving the Settlement
9 Agreement as "fair, reasonable and adequate and in the best interests of the Class, Yahoo! and its
10 stockholders...";

11 WHEREAS, Yahoo! intends to file a motion to dismiss Congregation Beth Aaron's
12 Amended Complaint based on the Settlement Agreement and the Chancery Court Order (the
13 "Motion") in which the Individual Defendants are expected to join;

14 WHEREAS, Defendants and Congregation Beth Aaron believe that the Motion raises a
15 threshold issue regarding the effect of the Settlement Agreement and the Chancery Court Order on
16 this action and further believe that the interests of judicial efficiency and the conservation of
17 judicial and private resources would be best served if the Motion is decided prior to the Court's
18 consideration of any other arguments Defendants may wish to present in favor of dismissal of the
19 Amended Complaint;

20 WHEREAS, the parties agree that all discovery and other proceedings shall be stayed
21 during the pendency of the Motion;

22 WHEREAS, Defendants and Congregation Beth Aaron wish to set a briefing schedule and
23 hearing date for the Motion while preserving Yahoo! and the Individual Defendants' rights to move
24 to dismiss the Amended Complaint based on grounds not asserted in the Motion if the Court denies
25 the Motion in whole or in part;

26 Now, therefore, the Defendants and Congregation Beth Aaron hereby stipulate and agree as
27 follows:

28

1 1. Yahoo! shall file the Motion and the Individual Defendants shall join in the Motion
2 by March 30, 2009;

3 2. Congregation Beth Aaron shall file its opposition to the Motion by May 1, 2009;

4 3. Any reply to Congregation Beth Aaron's opposition shall be filed by May 15, 2009;

5 4. The hearing on the Motion shall be held on June 5, 2009;

6 5. If the Court denies the Motion in whole or in part, Defendants shall have 30 days

7 from issuance of the Court's order denying the Motion in whole or in part to move to dismiss the

8 Amended Complaint based on any grounds other than those set forth in the Motion.

IT IS SO STIPULATED

0 | DATED: March 16, 2009

Wolf, Haldenstein, Adler, Freeman & Herz LLP

By: /s/ Betsy C. Manifold
Betsy C. Manifold
Attorneys for Plaintiff
Congregation Beth Aaron

5 | DATED: March 16, 2009

Munger, Tolles & Olson LLP

By: /s/ Robert L. Dell Angelo
Robert L. Dell Angelo
Attorneys for Defendants
Jerry Yang, Roy J. Bostock, Ronald W. Burkle,
Eric Hippeau, Vyomesh Joshi, Arthur H. Kern,
Robert A. Kotick, Edward R. Kozel, Gary L.
Wilson and Maggie Wilderotter

DATED: March 16, 2009

Skadden, Arps, Slate, Meagher & Flom LLP

By: /s/ James E. Lyons
James E. Lyons
Attorneys for Nominal Defendant
Yahoo! Inc.

1 []

2 For good cause shown, the briefing and hearing schedule on the Motion is set as follows:

3 1. Yahoo! shall file the Motion and the Individual Defendants shall join in the Motion
4 by March 30, 2009;
5 2. Congregation Beth Aaron shall file its opposition to the Motion by May 1, 2009;
6 3. Any reply to Congregation Beth Aaron's opposition shall be filed by May 15, 2009;
7 4. The hearing on the Motion shall be held on June 5, 2009 at 9:00 a.m.;
8 5. If the Court denies the Motion in whole or in part, Defendants shall have 30 days
9 from issuance of the Court's order denying the Motion in whole or in part to move to dismiss the
10 Amended Complaint based on any grounds other than those set forth in the Motion.

11 **IT IS SO ORDERED.** The Court hereby continues the Case Management Conference
12 set for May 8, 2009 to June 5, 2009 @ 10:30 a.m. (jg)

13
14 Dated: 4/30/09
15
16
17 Respectfully submitted,
18 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
19 James E. Lyons
20 Garret J. Waltzer
21 Thomas V. Christopher

Ronald M. Whyte
The Honorable Ronald M. Whyte
UNITED STATES DISTRICT JUDGE

22 By: /s/ James E. Lyons
James E. Lyons
23 Attorneys for Defendant
YAHOO! INC

24
25
26
27
28

1 **ATTESTATION PURSUANT TO GENERAL ORDER 45**

2
3 I, James E. Lyons, am the ECF User whose ID and password are being used to file
4 this Stipulation and [Proposed] Order Setting a Briefing Schedule and Hearing on Motion to
5 Dismiss Congregation Beth Aaron's Amended Verified Shareholder Derivative Complaint. In
6 compliance with General Order 45.X.B., I hereby attest that concurrence in the filing of this
7 document has been obtained from each of the other signatories. I declare under penalty of perjury
8 under the laws of the United States of America that the foregoing is true and correct.

9 Executed this 16th day of March 2009, at Palo Alto, California.

10 _____
11 /s/ James E. Lyons
12 James E. Lyons
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28